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8 **United States District Court**
9 **Central District of California**

10 MARTIN VOGEL,
11
12 Plaintiff,

13 v.

14 DOLANOTTO, LLC,
15 Defendant.

Case № 2:16-CV-02488-ODW (KSx)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT [36]**

16 **I. INTRODUCTION**

17 Plaintiff Martin Vogel brings this action against Defendant Dolanotto, LLC,
18 alleging violations of Title III of the Americans with Disabilities Act of 1990
19 (“ADA”) and various California statutes. (*See generally* Compl., ECF No. 1.) Before
20 the Court now is Plaintiff’s unopposed Motion for Summary Judgment. (Mot., ECF
21 No. 36.) For the reasons discussed below, the Court GRANTS IN PART and
22 DENIES IN PART Plaintiff’s Motion.¹

23 **II. FACTUAL BACKGROUND**

24 Plaintiff is a T-3 paraplegic. (Statement of Undisputed Facts (“SUF”), ECF No.
25 36-8, ¶ 1.) He is unable to walk or stand, and he needs to use a wheelchair to travel in
26 public. (*Id.*) Defendant is the landlord of a shopping center in Downey, California,
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28 ¹ After carefully considering the papers filed in support of the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 which contains a Blizzberry storefront. (*Id.* ¶¶ 2, 14.) Plaintiff visited the Blizzberry
2 shop and purchased fruit smoothies on March 3, 2016. (*See id.* ¶ 2.) During his visit
3 to the shopping center, Plaintiff encountered four barriers that impeded his access:

4 1. The disabled parking space in front of the Blizzberry² has excessively steep
5 slopes. (*Id.* ¶ 5.) According to Plaintiff's expert's measurements, the space had a
6 slope of 8.1 percent, and the rear of the space, which ends in a valley gutter, had a
7 slope of 9.1 percent. (*Id.* ¶ 7.) The expert also noted that the built-up curb ramp of
8 the access aisle encroached on the space, and the encroaching curb ramp had a slope
9 of 35.4 percent. (*See id.* ¶¶ 5, 12.) Plaintiff declares that this steep space makes it
10 difficult for him to disembark from a vehicle, as his wheelchair can roll or his
11 vehicle's lift platform cannot sit level. (*Id.* ¶ 6.)

12 2. The disabled parking space lacks adequate signage. (*Id.* ¶ 8.) Plaintiff and
13 Plaintiff's expert both observed that there is no sign depicting the international symbol
14 of accessibility or the words "van accessible" or "minimum \$250 fine" adjacent to,
15 within, or near the space, nor is there such a sign at the entrances to the parking lot.
16 (*Id.* ¶ 8; Bishop Decl. Ex. B, ECF No. 36-7, at 5.) Plaintiff expresses that the lack of
17 signage makes it difficult for him to have vehicles that are illegally parked in the
18 space towed away and to identify the space as a disabled parking space. (SUF ¶ 9.)

19 3. The access aisle adjacent to the disabled parking space in front of the
20 Blizzberry³ has excessively steep slopes. (*Id.* ¶ 10.) According to Plaintiff's expert's
21 measurements, the access aisle's curb ramp had a slope of 7.9 percent, and the rear of

22 ² Plaintiff's declaration in support of his Motion and the Complaint both state that "[a]t least three
23 (3) of the disabled parking spaces" suffer from this barrier to access. (Vogel Decl. ¶ 4(a), ECF No.
24 36-2; Compl. ¶ 10.) But the pictures Plaintiff took during his visit show only a single disabled
25 parking space. *See* Vogel Decl. Ex. B, ECF No. 36-4, at 6–9. Plaintiff's expert also indicated there
26 is only one disabled parking space in the lot, and he only evaluated the parking space appearing in
27 Plaintiff's pictures. (*See* Bishop Decl. Ex. B, ECF No. 36-7, at 4 photo 1 (displaying one parking
28 space from aerial view of facility); *id.* at 5 (discussing one parking space).)

³ Plaintiff's declaration in support of his Motion and the Complaint both state that "[a]t least two (2)
of the access aisles" suffer from this barrier to access. (Vogel Decl. ¶ 4(c); Compl. ¶ 10.) Plaintiff's
pictures and Plaintiff's expert both identify only one access aisle. (*See* Vogel Decl. Ex. B, at 6–9;
Bishop Decl. Ex. B, at 4 photo 1, 6–8 & photos 3–8.)

1 the access aisle, which ends in a valley gutter, had a slope of 8.8 percent. (*Id.* ¶ 12.)
2 Plaintiff notes that having a non-level access aisle makes it difficult him to disembark
3 from a vehicle, as his wheelchair can roll or his vehicle’s lift platform cannot sit level.
4 (*Id.* ¶ 11.)

5 4. The access aisle was obstructed by a “right turn only” sign. (*Id.* ¶ 13.)
6 Plaintiff’s expert, who visited the facility eighteen months after Plaintiff did, did not
7 observe the sign. (*See* Bishop Decl. Ex. B, at 5 photo 2, 6 photo 3, 10.)⁴

8 Plaintiff expresses that he enjoys the shopping center’s location and the stores
9 within it. He states that he intends to return to the facility and “would like to see it
10 made accessible to me.” (SUF ¶ 3.)

11 Plaintiff seeks summary judgment as to his first claim for violations of the
12 ADA, his third claim for violations of the Unruh Civil Rights Act (“UCRA”), and his
13 fourth claim for violations of California Health and Safety Code.⁵ (*See generally* Mot.
14 at 4–10.)

15 III. LEGAL STANDARD

16 A. Summary Judgment

17 Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if
18 the moving party demonstrates the absence of a genuine issue of material fact and
19 entitlement to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317,
20 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). A fact is material when, under the
21 governing law, the resolution of that fact might affect the outcome of the case.
22 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202
23

24
25 ⁴ In his Motion, Plaintiff concedes that the sign has been removed, and that he “does not seek
summary judgment as to this barrier.” (Mot. at 10.)

26 ⁵ The Motion does not seek summary judgment with respect to the second claim for violations of the
27 California Disabled Persons Act. Moreover, the Motion does not seek summary judgment of the
28 ADA, UCRA, and Health and Safety Code claims with respect to one of the four identified barriers
to access, which was remedied after Plaintiff filed this action. *See supra* note 4. Therefore, the
Court treats the Motion as one seeking partial summary judgment. *See* Fed. R. Civ. P. 56(a).

1 (1986). A dispute is genuine if “the evidence is such that a reasonable jury could
2 return a verdict for the nonmoving party.” *Id.* at 249.

3 A party seeking summary judgment bears the initial burden to establish the
4 absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. To satisfy this
5 burden, the moving party may simply point to portions of pleadings, admissions,
6 answers to interrogatories and depositions which, along with affidavits, show the
7 absence of a genuine issue of material fact. *See id.* If the moving party satisfies its
8 burden, the nonmoving party must produce specific evidence to show that a genuine
9 dispute exists. Fed. R. Civ. P. 56(e).

10 “In ruling on a motion for summary judgment, the nonmoving party’s evidence
11 is to be believed, and all justifiable inferences are to be drawn in that party’s favor.”
12 *Hunt v. Cromartie*, 526 U.S. 541, 552, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).
13 However, the nonmoving party “must do more than simply show that there is some
14 metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith*
15 *Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). “If the
16 evidence is merely colorable, or is not significantly probative, summary judgment
17 may be granted.” *Liberty Lobby*, 477 U.S. at 249–50.

18 **B. Subject Matter Jurisdiction**

19 Federal courts must examine jurisdictional issues at every stage of the litigation.
20 *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999) (“[F]ederal
21 courts are required sua sponte to examine jurisdictional issues such as standing.”). “If
22 the court determines at any time that it lacks subject-matter jurisdiction, the court must
23 dismiss the action.” *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631 F.3d 939, 954 (9th Cir.
24 2011) (citations omitted). To have standing under the ADA, a plaintiff must
25 demonstrate that he has suffered an injury-in-fact, that the injury is traceable to the
26 defendant’s actions, and that the injury can be redressed by a decision in his favor.
27 *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (en banc).

1 “Article III of the Constitution limits federal courts to the adjudication of actual,
2 ongoing controversies between litigants.” *Deakins v. Monaghan*, 484 U.S. 193, 199,
3 108 S. Ct. 523, 98 L. Ed. 2d 529 (1988). Mootness is a threshold jurisdictional issue.
4 *St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 537, 98 S. Ct. 2923, 57 L. Ed.
5 2d 932 (1978). “In general, a case becomes moot when the issues presented are no
6 longer live or the parties lack a legally cognizable interest in the outcome.” *Murphy v.*
7 *Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 71 L. Ed. 2d 353 (1982) (per curiam)
8 (citations and internal quotation marks omitted). In an ADA case, in which a plaintiff
9 can recover only injunctive relief, the Ninth Circuit has held that “a defendant’s
10 voluntary removal of alleged barriers prior to trial can have the effect of mootng a
11 plaintiff’s ADA claim.” *Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 905 (9th Cir.
12 2011); *see also Hubbard v. 7-Eleven, Inc.*, 433 F. Supp. 2d 1134, 1145 (S.D. Cal.
13 2006) (finding ADA claim moot after defendant remedied a ramp slope plaintiff
14 alleged was too steep).

15 IV. DISCUSSION

16 A. Americans with Disabilities Act

17 Title III of the ADA prohibits discrimination against persons with disabilities in
18 places of public accommodation. *See* 42 U.S.C. § 12182(a). The ADA authorizes
19 only injunctive relief for disabled individuals who suffer prohibited discrimination
20 and does not provide for the recovery of monetary damages by private individuals.
21 *See* 42 U.S.C. § 12188(a)(2); *Pickern v. Holiday Quality Foods, Inc.*, 293 F.3d 1133,
22 1136 (9th Cir. 2002).

23 “To prevail on a Title III discrimination claim, the plaintiff must show that
24 (1) [he] is disabled within the meaning of the ADA; (2) the defendant is a private
25 entity that owns, leases, or operates a place of public accommodation; and (3) the
26 plaintiff was denied public accommodations by the defendant because of his
27 disability.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 730 (9th Cir. 2007). For an
28 ADA claim based on architectural barriers to access, this final element can be

1 established by showing that (1) the existing facility presents an architectural barrier
2 prohibited by the ADA or its implementing regulations and (2) the barrier's removal is
3 readily achievable. *Parr v. L & L Drive-Inn Rest.*, 96 F. Supp. 2d 1065, 1085 (D.
4 Haw. 2000); *see* 42 U.S.C. § 12182(b)(2)(A)(iv) (defining prohibited discrimination
5 to include "the failure to remove architectural barriers" in existing facilities where
6 such removal is "readily achievable"). The Court addresses each element in turn.

7 **1. Plaintiff Is Disabled**

8 Under the ADA, a "disability" is "a physical or mental impairment that
9 substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A). The
10 ADA lists "walking" and "standing" as "major life activities." *Id.* § 12102(2)(A).
11 Plaintiff Vogel is a paraplegic who is unable to walk or stand. (SUF ¶ 1.) He is
12 disabled within the meaning of the ADA.

13 **2. Defendant Leases a Public Accommodation**

14 The ADA's definition of "public accommodation" includes an "establishment
15 serving food or drink" and a "shopping center, or other sales or retail establishment."
16 42 U.S.C. § 12181(7)(B), (E). Defendant admitted it is the landlord of the shopping
17 center containing the Blizzberry. (SUF ¶ 14 (citing Answer, ECF No. 13, ¶ 5).)
18 Plaintiff purchased fruit smoothies from the Blizzberry store in the shopping center.
19 (SUF ¶ 2; *see* Vogel Decl. Ex. A, ECF No. 36-3.) This element is satisfied, as
20 Defendant "leases . . . a place of public accommodation," the shopping center housing
21 the Blizzberry store. 42 U.S.C. § 12182(a); *accord* 28 C.F.R. § 36.201(b) ("Both the
22 landlord who owns the building that houses a place of public accommodation and the
23 tenant who owns or operates the place of public accommodation are public
24 accommodations subject to the requirements of this part.").

25 **3. Architectural Barriers Caused Plaintiff to Be Denied Public** 26 **Accommodations Due to His Disability**

27 The ADA proscribes discrimination in the form of "a failure to remove
28 architectural barriers . . . in existing facilities . . . where such removal is readily

1 achievable.” 42 U.S.C. § 12182(b)(2)(A)(iv). Plaintiff contends that each of the
2 extant architectural barriers is proscribed by the ADA Accessibility Guidelines
3 (“ADAAG”).⁶

4 The ADAAG requires vehicle standing spaces and access aisles to “be level
5 with surface slopes not exceeding 1:50 (2%) in all directions.” ADAAG § 4.6.3
6 (1991); *id.* § 4.6.6; *see* ADAAG § 502.4 (2010) (“Slopes not steeper than 1:48
7 [approximately 2.08 percent] shall be permitted.”). Here, both the parking space and
8 the access aisle are excessively steep: the parking space has a slope of 8.1–9.1 percent,
9 (SUF ¶ 7), and the access aisle has a slope of 7.9–8.8 percent, (*id.* ¶ 12).

10 Moreover, the ADAAG requires an accessible parking space to “be designated
11 as reserved by a sign showing the symbol of accessibility,” and such a sign “shall be
12 located so [it] cannot be obscured by a vehicle parked in the space.” ADAAG § 4.6.4
13 (1991); *see* ADAAG § 502.6 (2010) (“Parking space identification signs shall include
14 the International Symbol of Accessibility Signs identifying van parking spaces
15 shall contain the designation ‘van accessible.’ Signs shall be 60 inches (1525 mm)
16 minimum above the finish floor or ground surface measured to the bottom of the
17 sign.”). Neither Plaintiff nor his expert observed any signs containing the symbol of
18 accessibility, denoting the space as “van accessible,” or otherwise identifying the
19 space as disabled parking. (SUF ¶ 8; Bishop Decl. Ex. B, ECF No. 36-7, at 5.)

20 These barriers affect Plaintiff’s access to the facility due to Plaintiff’s disability.
21 The excessive slopes make it difficult for Plaintiff to disembark from a vehicle
22 because his wheelchair can roll and his vehicle’s lift platform cannot sit level. (SUF
23 ¶¶ 6, 11.) Moreover, the lack of adequate signage prevents Plaintiff from having cars
24 illegally parked in the disabled space towed away or identifying the space as
25 designated for disabled persons. (*Id.* ¶ 9.)

26
27 ⁶ The record before the Court on this Motion does not indicate when the facility was constructed or
28 altered, so the Court weighs Defendant’s compliance with both the 1991 and 2010 ADAAG
standards. *See* 28 C.F.R. § 36.406(a) (establishing that 2010 standards apply to construction and
alterations undertaken after March 15, 2012).

4. Removal of the Barriers Is Readily Achievable

“Readily achievable means ‘easily accomplishable and able to be carried out without much difficulty or expense.’” *Molski*, 481 F.3d at 730 (quoting 42 U.S.C. § 12181(9)). Four considerations guide whether remedial action is readily achievable:

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

42 U.S.C. § 12181(9). Federal regulations list examples of readily achievable barrier removals, including “[i]nstalling ramps” and “[c]reating designated accessible parking spaces.” 28 C.F.R. § 36.304(b)(1), (18).

The Ninth Circuit has yet to decide which party has the burden of proving that removal of an architectural barrier is readily achievable, *Vogel v. Rite Aid Corp.*, 992 F. Supp. 2d 998 (C.D. Cal. 2014), but the Court is persuaded by the burden-shifting framework articulated in *Colorado Cross Disability v. Hermanson Family, Ltd.*, 264 F.3d 999 (10th Cir. 2001). Under this framework, the “[p]laintiff bears the initial burden of production to present evidence that a suggested method of barrier removal is readily achievable,” and the burden shifts to the defendant to show that barrier removal is not readily achievable if the plaintiff makes this showing. 264 F.3d at 1006.

1 Here, although three of the considerations guiding whether remedial action is
2 readily achievable look to the defendant's resources, *see* 42 U.S.C. § 12181(9)(B)–
3 (D), the record is sparse as to Defendant's financial and operational capacity. The
4 Court surmises from Defendant's Answer that it collects rent from its tenants and,
5 therefore, has a non-negligible source of rent income. (*See* Answer ¶ 5 (admitting that
6 "Defendant is the landlord of the 'Shopping Center' as defined in the Complaint").)

7 As to the first consideration, the "nature and cost" of remediation, "[c]reating
8 designated accessible parking spaces" and "[i]nstalling ramps" are actions expressly
9 listed as examples of readily achievable steps to remove barriers. 28 C.F.R.
10 § 36.304(b)(1), (18). Defendant could remedy the issue by designating a new disabled
11 parking space and access aisle in the parking lot without an impermissible slope to
12 replace the current space. Given that creating "*designated* accessible parking spaces"
13 requires installation of a sign under ADAAG § 502.6 (2010), it may be inferred from
14 28 C.F.R. § 36.304(b)(18) that the act of installing a sign designating a parking space
15 as accessible is readily achievable.

16 Further, the cost of remedial actions is low, suggesting removing the barriers is
17 readily achievable. *See* 42 U.S.C. § 12181(9)(A). Plaintiff's expert estimated that the
18 total remedial cost "would be less than \$5,000" and that such a remedial project "is
19 very common . . . and can be accomplished by most paving or general contractors."
20 (Bishop Decl. Ex. B, at 10.)

21 Defendant neither responded to the Motion nor proffered any evidence, denials,
22 or affirmative defenses suggesting it lacks the few resources necessary to remedy the
23 architectural barriers. Thus, the Court concludes that removing the barriers to access
24 Plaintiff identified is readily achievable.

25 In sum, Plaintiff has established all the necessary elements for his Title III ADA
26 claim. Consequently, summary judgment is **GRANTED** as to the three extant access
27 barriers: (1) the excessively steep parking space slope, (2) the lack of signage, and
28 (3) the excessively steep access aisle slope.

1 **B. Unruh Civil Rights Act**

2 “In the disability context, California’s Unruh Civil Rights Act operates virtually
3 identically to the ADA.” *Molski*, 481 F.3d at 731. “A violation of the right of any
4 individual under the federal Americans with Disabilities Act of 1990 . . . shall also
5 constitute a violation of” the UCRA. Cal. Civ. Code § 51(f). Because Plaintiff is
6 entitled to summary judgment on the ADA claim, he is entitled to summary judgment
7 on the UCRA claim.

8 A person denied rights provided by the UCRA may recover monetary damages,
9 or statutory damages of no less than \$4,000, as well as attorney fees. Cal. Civ. Code
10 § 52(a). “The litigant need not prove [he] suffered actual damages to recover the
11 independent statutory damages of \$4,000.” *Molski*, 481 F.3d at 731. Plaintiff does not
12 offer any proof of actual damages, and he describes only one documented visit to the
13 shopping center on March 3, 2016. (SUF ¶ 2.) Therefore, Plaintiff may recover
14 statutory minimum damages of \$4,000 in addition to attorney fees. Therefore, the
15 Motion is **GRANTED** as to the UCRA claim.

16 **C. California Health and Safety Code**

17 In California, public accommodations must conform to Chapter 7 of the
18 California Government Code, § 4450 *et seq.* Cal. Health & Safety Code § 19956. In
19 turn, Government Code § 4450(b) requires that facilities be “accessible to and usable
20 by persons with disabilities.” Nevertheless, certain classes of facilities are exempted
21 from this requirement. *See, e.g.*, Cal. Health & Safety Code § 19956. Public
22 accommodations constructed before July 1, 1970 are subject to the access
23 requirements only “when any alterations, structural repairs or additions are made to
24 such public accommodations. This requirement shall only apply to the area of specific
25 alteration, structural repair or addition and shall not be construed to mean that the
26 entire building or facility is subject to this chapter.” *Id.* § 19959.

27 Plaintiff proffers no evidence regarding the dates of construction or alteration of
28 the facility. Because the record does not demonstrate that the facility and its parking

1 accommodations were constructed, altered, or repaired after July 1, 1970, Plaintiff has
2 not established that the shopping center generally or the parking lot specifically is
3 subject to the Health and Safety Code provision he invokes. Therefore, he is not
4 entitled to summary judgment as to this claim. *Cf. Yates v. Bacco*, No. C-11-01573
5 DMR, 2014 U.S. Dist. LEXIS 35340, 2014 WL 1089101, at *14 (N.D. Cal. Mar. 17,
6 2014) (deeming a Health and Safety Code claim abandoned because no evidence in
7 the record demonstrated that defendant’s building was constructed or altered after July
8 1, 1970); *Hubbard v. Gupta*, No. 04cv2591-LAB (POR), 2006 U.S. Dist. LEXIS
9 83544, at *19–20 (S.D. Cal. Nov. 14, 2006) (holding that “plaintiffs bear the burden
10 of proving violations of health and safety statutes,” including adducing evidence that
11 facility in question was constructed or altered after July 1, 1970). Summary judgment
12 is **DENIED** as to this claim.

13 **D. Dismissal as Moot of ADA Claim Based on “Right Turn Only” Sign**
14 **Barrier**

15 Plaintiff concedes that one of the barriers to access he identified in his
16 Complaint, a “right turn only” sign obstructing the access aisle, was removed after he
17 filed this action. (*See* Mot. at 10 (stating that Plaintiff “does not seek summary
18 judgment as to this barrier”); *compare* Vogel Decl. Ex. B, at 6 (showing the “right
19 turn only” sign), *with* Bishop Decl. Ex. B, at 5 photo 2, 6 photo 3, 10 (showing the
20 access aisle without the sign).)

21 “[A] defendant’s voluntary removal of alleged barriers prior to trial can have
22 the effect of moot[ing] a plaintiff’s ADA claim.” *Oliver v. Ralphs Grocery Co.*, 654
23 F.3d 903, 905 (9th Cir. 2011). Here, the “right turn only” sign has been removed, so
24 the ADA claim is moot to the extent it is based on this sign. As the Court grants the
25 Motion as to the other three of four access barriers Plaintiff identifies in the
26 Complaint, the Court sua sponte **DISMISSES** the balance of the ADA claim as moot.

1 **E. Order to Show Cause re Subject Matter Jurisdiction**

2 Given the Court’s disposition of the Motion, two claims persist: the second
3 claim for violations of the California Disabled Persons Act and the fourth claim for
4 violations of the California Health and Safety Code.

5 The Court may not be able to adjudicate the remaining claims given the
6 resolution of the Motion in Plaintiff’s favor. To have Article III standing, a plaintiff
7 must demonstrate that the injuries the defendant caused can be redressed by a decision
8 in his favor. *Chapman*, 631 F.3d at 946. Even if judgment were entered in Plaintiff’s
9 favor with respect to the remaining claims, it is not clear that Plaintiff could recover
10 additional relief not already afforded by judgment in his favor on the ADA and UCRA
11 claims. As to the Disabled Persons Act claim, Plaintiff cannot recover damages if he
12 has recovered under the UCRA. *See* Cal. Civ. Code § 54.3(c). Moreover, Plaintiff is
13 already entitled to attorney fees as relief afforded by the UCRA, *id.* § 52(a), which is
14 the only other category of relief available to him under the Disabled Persons Act
15 claim, *see id.* § 54.3(a). Prevailing on the Health and Safety Code claim would allow
16 Plaintiff to recover attorney fees and injunctive relief. *See* Cal. Health & Safety Code
17 § 19953. But Plaintiff is already entitled to those categories of relief based on the
18 grant of summary judgment on his UCRA claim, Cal. Civ. Code § 52(a), and the ADA
19 claim, 42 U.S.C. § 12188(a)(2), respectively. The Court is uncertain whether a
20 judgment on the Disabled Persons Act and Health and Safety Code claims would
21 redress any of Plaintiff’s injuries because all requested relief is already recoverable
22 under Plaintiff’s other two claims, for which he is entitled to summary judgment.

23 Moreover, the Court is unsure whether the continued exercise of supplemental
24 jurisdiction over these state law claims is appropriate. Plaintiff alleges that the Court
25 has jurisdiction over the remaining claims under 28 U.S.C. § 1367 because they arise
26 from the same nucleus of operative fact as Plaintiff’s ADA claim, over which this
27 Court has original jurisdiction. (Compl. ¶¶ 3–4.) Nevertheless, a district court may
28 decline to exercise supplemental jurisdiction if “the district court has dismissed all

1 claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). Upon
2 entering judgment on the ADA claim and granting injunctive relief as to the three
3 extant architectural barriers, and upon dismissing the balance of the ADA claim as
4 moot, the Court may dismiss the remaining state law claims in its discretion. The
5 Court is inclined to do so.

6 Thus, the Court **ORDERS** Plaintiff to **SHOW CAUSE**, in writing, no later than
7 **March 5, 2018**, why this Court should not dismiss the second and fourth claims for
8 lack of subject matter jurisdiction.

9 **V. CONCLUSION**

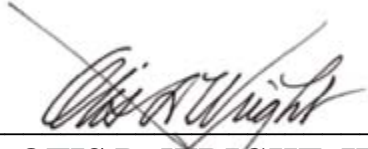
10 For the reasons discussed above, the Court **GRANTS IN PART** Plaintiff’s
11 Motion for Summary Judgment as to the first claim for violations of the Americans
12 with Disabilities Act of 1990 and the third claim for violations of the Unruh Civil
13 Rights Act. The Court **DENIES IN PART** the Motion for Summary Judgment as to
14 the fourth claim for violations of the California Health and Safety Code.

15 The balance of the first claim for violations of the Americans with Disabilities
16 Act of 1990 is **DISMISSED**, as moot, as explained above.

17 Plaintiff is **ORDERED TO SHOW CAUSE** why the Disabled Persons Act and
18 California Health and Safety Code claims should not be dismissed for lack of subject
19 matter jurisdiction.

20 **IT IS SO ORDERED.**

21
22 February 13, 2018

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24 
25 **OTIS D. WRIGHT, II**
26 **UNITED STATES DISTRICT JUDGE**
27
28